

CIVIL SERVICE COMMISSION MINUTES

January 15, 2003

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 302-303 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin
Barry I. Newman
Sigrid Pate
Mary Gwen Brummitt
Marc Sandstrom

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
January 15, 2003

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 302/303, 1600 Pacific Highway,
San Diego, California 92101

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>1,6,7,10,11,12,14,15</u>	<u>18</u>	<u>8,9,10</u>	

COMMENTS Motion by Brummitt to approve all items not held for discussion; seconded by Sandstrom. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Deanne Dorsey**, former Community Living Aide, appealing an Order of Removal and Charges from the Health and Human Services Agency (HHSA).

B. Commissioner Newman: Michael Baranic, Esq., on behalf of **Rigoberto Padilla**, former Deputy Sheriff-Detentions, appealing an Order of Termination and Charges from the Sheriff's Department.

C. **San Diego Police Officers' Association, et al. v. City of San Diego Civil Service Commission**, Superior Court No. 762695 - Conference with William Songer, Senior Deputy County Counsel.

REGULAR AGENDA
County Administration Center, Room 302/303

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and the President of the Commission approves it.

ELECTIONS

1. Election of President and Vice-President of the Civil Service Commission for 2003.

Motion by Brummitt to nominate Newman as President and Pate as Vice-President; seconded by Sandstrom. Carried.

MINUTES

2. Approval of the Minutes of the regular meeting of December 18, 2002.

Approved.

CONFIRMATION OF ASSIGNMENTS

3. Commissioner Sandstrom: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Rosalinda R. Grant**, Nurses Assistant, appealing an Order of Suspension and Charges from the Health and Human Services Agency (HHSA).

Confirmed.

4. Commissioner Newman: Everett Bobbitt, Esq., on behalf of **Daniel Ramirez**, Deputy Sheriff, appealing two (2) Orders of Suspension and Charges from the Sheriff's Department.

Confirmed.

5. Commissioner Brummitt: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Gary Higgins**, former Recordable Documents Specialist I, appealing an Order to Refrain from Incompatible Activity from the Assessor/Recorder/County Clerk.

Confirmed.

DISCIPLINES

Findings

6. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Deanne Dorsey**, former Community Living Aide, appealing an Order of Removal and Charges from the HHSA.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Conduct Unbecoming an Employee of the County (inappropriate relationship with a mental health services client); Cause II - Failure of Good Behavior; Cause III - Willful misconduct that has caused damage to public property or waste of public supplies (personal use of County van); Cause IV - Dishonesty (denied solicitation of patients for some of their prescribed medications for personal use); Cause V - Insubordination; Cause VI - Acts that are Incompatible with and Inimical to the Public Service; Cause VII - Discourteous treatment of the public or other Employees. Employee has been employed by HHSA since May, 2000. She held the position of Community Living Aid in the Mental Health Services division of the Agency. She is a former client of the division and was hired for the dual purpose of performing her job duties as well as being a mentor to other clients. One of her main duties consisted of transporting clients in a County van. Employee and Agency stipulated to the truth of various charges alleged under the Causes of the Order of Removal: Cause I; Cause II (B,C); Cause III and V as they relate to other causes and charges set forth in the Order.

The Agency provided testimony of a client that Employee, on one occasion, was smoking marijuana while driving the County van. Moreover, the witness said that Employee offered it to her, and, while driving, almost hit a pedestrian and then joked about it. This same witness testified that Employee solicited her medication and that Employee made personal phone calls to her by use of a phone number which she did not give to Employee.

The person assigned to investigate the charges testified that Employee denied making phone calls to a client, however, when he played her the recording that she left on the client's answering machine, Employee acknowledged it as her voice but said she did not recall leaving the message.

Employee presented testimony of her treating psychiatrist to show that she was afflicted with a schizo-defective disorder and that her misconduct was a result of a recently changed medication that he prescribed.

The Hearing Officer found that Employee engaged in illegal activity which created a high risk of injury or death to others. It is obvious that the Agency cannot risk the consequences of any further such behavior, whether it is the result of another medication change or something else beyond the control of Employee. Employee's high risk illegal activity clearly created a liability that was unacceptable to the County. Employee is guilty of Causes I through VII. It is therefore recommended that the Order of Removal and Charges be affirmed; that the Commission read and file this Report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Pate to approve Findings and Recommendations; seconded by Newman. Carried.

7. Commissioner Newman: Michael Baranic, Esq., on behalf of **Rigoberto Padilla**, former Deputy Sheriff-Detentions, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Failure of Good Behavior (force that was not reasonable and necessary against an inmate); Cause II - Incompetence (failed to document or report use of force); Cause III - Immorality (excessive force which resulted in a criminal investigation); Cause IV - Failure of Good Behavior; Cause V - Failure of Good Behavior; Cause VI - Incompetence; Cause VII - Immorality; Cause VIII - Failure of Good Behavior (assault by a Public Officer; Oppression of a Prisoner); Cause IX - Failure of Good Behavior; Cause X - Incompetence; Cause XI - Immorality; Cause XII - Failure of Good Behavior; Cause XIII - Failure of Good Behavior; Cause XIV - Incompetence; Cause XV - Immorality; Cause XVI - Failure of Good Behavior; Cause XVII - Conduct Unbecoming an Officer or Employee of the County; Cause XVIII - Acts which are Incompatible with and/or Inimical to the Public Service.

Employee has been employed by the County as a Corrections Deputy for approximately 4 and a half years, primarily assigned to the George Bailey Detention Center. The charges contained in the Order pertained to an incident that occurred on the evening of October 26, 2001 and the early morning hours of the next day at the George Bailey Detention Center. There was testimony that there were problems in housing module 2A in the two weeks leading up to this incident. On the evening of October 26, 2001, Employee, with the assistance of two other deputies went to Quad 201 due to a report that some inmates were not in their beds. With the assistance of the two deputies, Employee took these inmates to the medical holding unit and then had the deputies assist him in taking each inmate, one at a time, to the recreation yard, where physical discipline was administered as well as verbal admonishment. Such physical discipline included, but was not limited to kicking, grabbing of the hair or collar, pushing the head forward, ordering inmates to kneel while pressing them, with Employee's full body weight, against the door, and slapping. The process was essentially the same for each inmate with minor variations. There were three witnesses to the disciplines, two of whom were the deputies assisting Employee. At the hearing, one of the deputies testified that he heard an inmate's head bang on the door when Employee pushed the inmate's head forward and

thereafter the inmate was crying. He further testified that he was made so uncomfortable that he reported the incident to a Corporal. Both deputies spoke to Employee and encouraged him to file a Use of Force Report, but Employee stated that he did not feel it was necessary. At the hearing, Employee testified that, in retrospect he should have filed a report for slapping one of the inmates. Within 24 hours of the disciplines, the Department initiated an Internal Affairs investigation wherein photos were taken of significant bruising and abrasions on the inmates. (The County settled claims by three of the inmates and the fourth inmate has rejected an amount offered as insufficient.)

At the hearing there was conflicting testimony as to whether it was common or acceptable practice within the Department to require inmates to kneel and face the wall, however there was no testimony for that position to be used in combination with a deputy's full body weight pressed down and against the inmate. The hearing officer concluded that Employee's actions were abusive and lacked good judgment and appeared motivated more by anger than logic. Additionally, Employee's conduct was methodical and lengthy, and cannot be attributed to lapse of judgment. Risk to inmates and the Department is great. Despite Employee's lack of prior discipline and consistently acceptable performance ratings, the hearing officer concurred with the Department's decision to terminate Employee's employment. Employee is guilty of Causes I, II, III, V, VI, VI, IX, X, XI, XIII, XIV, XV, XVII, and XVIII. Employee is not guilty of Causes IV, VIII, XII, and XVI. It is therefore recommended that the Order of Termination and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Newman to approve Findings and Recommendations; seconded by Pate. Carried.

DISCRIMINATION

Complaints

8. Wendell Prude, S.E.I.U. Local 2028, on behalf of **Leticia Molina**, former Intermediate Clerk Typist, alleging disability discrimination by the Assessor/Recorder/County Clerk.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Pate assigned.

9. **Ardyth Shaw**, Volunteer and Public Services Coordinator, Probation Department, alleging race discrimination by the Probation Department.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back. (See Item No. 13 below.)

Staff recommendation approved. Commissioner Austin assigned.

NOTE: (Commissioner Newman requested that these Minutes reflect he has secluded himself from this item as well as item no. 13 below.)

10. **Jodi Breton, Chandra Carle, Steven Carver, Karl Eppel, Joanne Evoy, David Hendren, Paul Johnsen, Michele Linley, Susan Martin, Karen McKinley, Stacey Alyn McReynolds, Dennis Panish, Kelly Rand, Stacy Running, Robert**

Stein, Laura Tanney, Deborah Thomas, Anne Marie Urrutia and Cynthia Windsor, Candidates for Deputy District Attorney IV, alleging political affiliation discrimination by the former District Attorney.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back. (See Item No. 14)

This item, in conjunction with Item No. 14, was pulled for discussion. Larry Cook, Executive Officer, thanked all parties involved in this matter for their continued cooperation and good will. He explained to the Commission that 16 individuals were promoted to the DA IV classification; 23 individuals appealed the selection process (Rule X); 19 of the 23 requested both a Rule X selection process hearing and a Rule VI discrimination investigation. Four individuals requested a Rule X selection process hearing, only.

Mr. Cook reminded the Commission that the normal practice of the Commission is to refer the Rule VI complaints to OIA, first, and hold the Rule X complaints in abeyance until the conclusion of OIA's investigation. However, Mr. Cook offered that perhaps the Commission wanted to handle this matter differently due to the multiple complainants and appellants (especially those requesting a Rule X only). He suggested that perhaps the Commission may want to hear the Rule Xs first, or concurrently with the Rule VIs. However, Mr. Cook stated that staff's recommendation above is still the preferred course of action.

Steven Carver, Stacey McReynolds and Laura Tanney, candidates for the Deputy DA IV classification addressed the Commission regarding this Item, as well as Item No. 14. Robert Stein, also a DDA IV candidate, requested that the Commission provide him with the attachments referred to in the responses from the DA and DHR. (Near the conclusion of the meeting, staff provided Mr. Stein with a copy of those attachments).

Motion by Newman to commence the process on the Rule VI discrimination complaints and to hold the Rule X selection process appeals in abeyance; seconded by Pate. Carried. Commissioner Sandstrom assigned.

Findings

11. Commissioner Sandstrom: **Nasser Nemati**, applicant, alleging age and national origin discrimination by the Department of Planning and Land Use.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on October 16, 2002, the Commission appointed Marc Sandstrom to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of discrimination based on age and national origin by the Department of Planning and Land Use, and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that this complaint be denied; that the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Sandstrom to approve Findings and Recommendations; seconded by Pate. Carried.

12. Commissioner Newman: **Jo Ann Siah**, former Legal Support Assistant I, Department of the Public Defender, alleging racial discrimination and discrimination based on skin color by the Department of the Public Defender.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on October 16, 2002, the Commission appointed Barry I. Newman to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of racial discrimination and discrimination based on skin color by the Department of the Public Defender, and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that this complaint be denied; the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Newman to approve Findings and Recommendations; seconded by Pate. Carried.

INVESTIGATIONS

Requests

13. **Ardyth Shaw**, Volunteer and Public Services Coordinator, Probation Department, requesting an investigation into alleged improper personnel practices in the Probation Department.

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation listed above. (See Item No. 9)

Staff recommendation approved.

SELECTION PROCESS

Complaints

14. **Jodi Breton, Chandra Carle, Steven Carver, Karl Eppel, Joanne Evoy, David Hendren, Paul Johnsen, Michele Linley, Susan Martin, Karen McKinley, Stacey Alyn McReynolds, Dennis Panish, Kelly Rand, Stacy Running, Robert Stein, Laura Tanney, Deborah Thomas, Anne Marie Urrutia, Cynthia Windsor, Richard Armstrong, Kimberly Brown, Robert Kearney and Rori Mary Robinson***, candidates for Deputy District Attorney IV, appealing the selection process used by the Department of Human Resources (DHR) and the former District Attorney for the classification of Deputy District Attorney IV.

Except for **Rori Mary Robinson, whose complaint is against DHR only.*

RECOMMENDATION: Hold all complaints in abeyance pending the outcome of the discrimination investigations listed above. (See Item No. 10)

Staff recommendation approved. See Item No. 10 above.

15. **James Atkins, Rick Clabby, Glenn McAllister, Elizabeth Porterfield, Phyllis Shess, Andre Stutz and Terri Wyatt**, prospective candidates for Deputy District Attorney V, appealing the selection process used by DHR and the former District Attorney for the classification of Deputy District Attorney V.

RECOMMENDATION: Continue to the next meeting.

Larry Cook, Executive Officer, offered an update regarding this matter. Subsequent to this Agenda being distributed, Staff received additional information and has had an opportunity to speak with each of the candidates (both DDA IVs and Vs). In the case of the Vs, six individuals have requested a Rule X selection process hearing; one individual has also requested a Rule VI discrimination investigation, and Andre Stutz has withdrawn his request(s) for review. Mr. Cook amended Staff Recommendation to allow the Rule VI to be assigned and hold the Rule Xs in abeyance.

Motion by Sandstrom to approve revised staff recommendation; seconded by Brummitt. Carried. Commissioner Sandstrom assigned.

Findings

16. **Gary Quimby**, appeal of removal of his name by DHR from the employment list for Deputy Sheriff-Detentions/Courts.

17. **Carlos J. Marques**, appeal of removal of his name by DHR from the employment list for Deputy Sheriff-Detentions/Courts.

RECOMMENDATION: Ratify Item Nos. 16 and 17. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 16 and 17 ratified.

OTHER MATTERS

Seal Performance Appraisal

18. **Lane M. Healey**, Correctional Counselor, Sheriff's Department, requesting the sealing of a Performance Appraisal for the period April 25, 2001 to April 25, 2002.

RECOMMENDATION: Consider all written and verbal input.

Wendell Prude, SEIU Local 2028, requested, on behalf of Ms. Healey, a continuance in this matter. Tom Reed, representing the Department, agreed to the continuance.

Motion by Newman to continue this matter; seconded by Pate. Carried.

Continued.

Extension of Temporary Appointments

19. Health and Human Services Agency

A. 1 Administrative Services Manager II (Janice DiCroce)

B. 1 Departmental Personnel Officer II (Merci Castro)

- C. 9 Eligibility Technicians (Maurico Fernandes, Janis Walsh, Jacqueline Castleman, Michelle Trujillo, Julie Neill, Mary Hadaway, Jennifer Davis, Dawn Williams, Candis Baptiste)
- D. 20 Protective Services Workers I (Cheryl Berglund, Roberto Calderon, Rodney Bates, Jeffrey Kay, Mariana Brown, Sara Whitney, Anousack Phayvanh, Kathleen Giles, Rebecca Parr, Christine Cheung, Sabina Salazar, Elsa Esquivel, Maritza Duenas, Deborah Jordan, Rose Marie Trejo, Ana Martinez, Carla Angeles, Christina Mayo, Tiffany Butterfield, Maria Coria)
- E. 8 Protective Services Workers II (Nadja Perez, Joseph Nunez, Lucia Millan, David Smith, Lisa Spees, Sylvia Crane-Hurd, Alan Groves, Carolyn Lewis)

20. Agriculture, Weights & Measures

- A. 2 Insect Detection Specialists I (Katherin Rollins, Breman Agyemang)
- B. 1 Insect Detection Specialist II (Mary Rowin)

21. Department of Animal Control

- 1 Registered Veterinary Technician (Hisham Ali)

22. Department of Child Support Services

- 1 Imaging Technician Trainee (Lena Cheang)

RECOMMENDATION: Ratify Item Nos. 19 - 22.

Item Nos. 19-22 ratified.

23. Public Input.

ADJOURNMENT: 4:00 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE FEBRUARY 5, 2003.